



2018-TIOL-451-ITAT-KOL

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'C' KOLKATA**

**ITA No. 1197/Kol/2015
Assessment Year: 2011-12**

**DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-11(2), P-7, CHOWRINGHEE
SQUARE, KOLKATA-69**

Vs

**M/s P C CHANDRA JEWELLERS PVT LTD
49C, GAIAHAT ROAD, KOLKATA-19
PAN NO:AABCP8654M**

N V Vasudevan, JM & Waseem Ahmed, AM

**Date of Hearing: January 11, 2018
Date of Decision: February 02, 2018**

Appellant Rep by: Shri Sallong Yaden, Addl. CIT-SR-DR
Respondent Rep by: Shri Ravi Tulsiyan, FCA

Income tax - Sections 271(1)(c) & 274.

Keywords - Depreciation on land - Correction in computation - Mistaken wrong claim - Levy of penalty.

The Assessee is a franchisee of branded jewellers. During the relevant year, Assessee company had filed its return declaring income of Rs.15,55,40,588/- and its case was selected for scrutiny, wherein the AO observed that the assessee had claimed depreciation in the computation of income for Rs.78,95,954/- on the land for Rs.7,89,59,536/- purchased during the year. On being confronted to the impugned issue, assessee conceded its mistake and offered amount of depreciation to tax. Accordingly, AO disallowed the amount of depreciation claimed by assessee on land and added it to its total income. However, AO in his assessment proceedings initiated penalty proceedings u/s 271(1)(c) and issued penalty notice u/s. 274.

On appeal, the FAA observed that the assessee had claimed depreciation on the land inadvertently and same mistake was rectified by the auditor in writing by filing a letter before AO. Further, the AO had not recorded any dissatisfaction for holding that assessee had furnished inaccurate particulars of income and necessary details for the purchase of land was duly furnished in the audited financial statement. Therefore, there was no misstatement furnished by assessee. Therefore, the FAA deleted the penalty imposed by AO.

On appeal, the ITAT held that,

Whether unintentional default merits levy of penalty even if such default is admitted and the amount is offered to tax during assessment proceedings - NO: ITAT

++ it is beyond doubt that the assessee has claimed depreciation on the land for which it was not entitled under the provisions of the Act. The mistake committed by the assessee was admitted during assessment proceedings and therefore the income of assessee was enhanced by the amount of depreciation claimed on the land. It is also a fact that the assessee is also a private limited company and assisted by the tax

consultants. Therefore such silly mistake cannot be expected by such organized company. However the Supreme Court in such a situation has held that the inadvertent mistakes committed by the assessee do not warrant the imposition of liability u/s 271(1)(c). Besides, it is also found that notice issued by the AO u/s 274 does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 does not strike out the inappropriate words. In these circumstances, imposition of penalty cannot be sustained.

Revenue's appeal dismissed

ORDER

Per: Waseem Ahmed:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-4, Kolkata dated 06.07.2015. Assessment was framed by DCIT, Circle-11, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 28.08.2013 for assessment year 2011-12. Revenue has raised following ground:-

"1. That on the facts and in the circumstances of the assessee Ld. CIT has erred in deleting the penalty of Rs.23,68,786/- imposed u/s. 271(1)(c) of the IT Act. 1961.

2. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or all the time of hearing."

Shri Sallong Yaden, Ld. Departmental Representative appeared on behalf of Revenue and Shri Ravi Tulsian, Ld. Authorized Representative appeared on behalf of assessee.

2. Solitary issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the penalty of Rs.23,68,786/- imposed by the Assessing Officer u/s. 271(1)(c) of the Act.

3. Briefly, the facts are that the assessee in the year under consideration filed its return of income dated 29.09.2011 declaring total income of Rs.15,55,40,588/- only. Subsequently the case was selected under scrutiny on the basis of CASS module and accordingly notice u/s. 143(2)/142(1) were issued upon the assessee dated 10.09.2011. Again another notice was issued by the AO u/s. 142(1) dated 16.04.2013 requiring the assessee to furnish the certain details.

4. The AO on perusal of the details filed by the assessee observed that it has claimed depreciation in the computation of income for Rs.78,95,954/- on the land for Rs.7,89,59,536/- purchased during the year. On being confronted to the impugned issue, assessee conceded its mistake and offered amount of depreciation to tax vide letter dated 05.08.2013. Accordingly, AO disallowed the amount of depreciation claimed by assessee on land and added to the total income of assessee. However, AO in his assessment proceedings initiated penalty proceedings u/s 271(1)(c) of the Act and issued penalty notice u/s. 274 of the Act dated 28.08.2013. The AO finally levied the penalty of Rs.23,68,786/- being 100% of the tax sought to be evaded by assessee u/s. 271(1)(c) of the Act.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that it had claimed depreciation on the land inadvertently and same mistake was rectified by the auditor in writing by filing a letter before AO on 05.08.2013. The AO has not recorded any dissatisfaction for holding that assessee has furnished inaccurate particulars of income and necessary details for the purchase of land was duly furnished in the audited financial statement. Therefore, there was no misstatement furnished by assessee. Ld. CIT(A) after considering the submission of assessee deleted the penalty imposed by AO by observing as under:-

"6. I have carefully considered the written submission of the AR of the appellant. I have also gone through the various judicial decisions relied upon by the AR. on an overall analysis of the matter and also the AR's submissions on the imposition of penalty u/s. 271(1)(c) by the AO, I find that the appellant had conceded suo motto during the course of the assessment proceeding that an inadvertent mistake had occurred on the pt of the Auditor in claiming the impugned depreciation which was sought to be rectified and a bona fide explanation in this regard., whereby, the said amount was offered for taxation. Going by the various court decisions as well as Explanation 1 to section 271(1)(c), I find that penalty for concealment does not arise in the appellant's case. The appellant had offered an explanation which was not found to be false by the AO and also that the appellant had offered an explanation which was duly substantiated and such explanation was bona fide made and that all the facts relating to the same and material to the computation of its total income had been disclosed by the

appellant. I find that there was no mala fide intention on the part of the appellant to conceal its income by making a wrong claim on account of the impugned depreciation. The case of *Price Waterhouse Coopers (P) Ltd. vs. CIT* (2012) 348 ITR 306 (SC) = **2012-TIOL-84-SC-IT** as narrated supra squarely covers the case of the appellant as well. Furthermore, the jurisdictional Hon'ble ITAT, Kolkata under similar circumstances, as narrated supra, has waived the penalty imposed u/s.271(1)(c) of the Act by taking into consideration the decisions in the case of *CIT vs. Reliance Petroproducts Pvt. Ltd.* (2010) 322 ITR 158 (SC) = **2010-TIOL-21-SC-IT**; *CIT vs. Snia Mirza (A.P. High Court ITA No. 526 of 2011 dated 09.02.2012)* = **2013-TIOL-18-HC-AP-IT** and *Price Waterhouse Coopers (P) Ltd. vs. CIT* (2012) 348 ITR 306 (SC) = **2012-TIOL-84-SC-IT**. In the case of *CIT vs. Reliance Petroproducts Pvt. Ltd.* (2010) 322 ITR 158 (SC) = **2010-TIOL-21-SC-IT**, the Apex Court specifically ruled that – "A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars". I find that the ratio of the other court decisions cited by the AR supra to be also applicable in the appellant's case considering the similar facts and circumstances. In view of the foregoing and considering the facts and circumstances of the appellant's case, I do not find any merit in the action of the AO in imposing the impugned penalty which is now directed to be deleted."

The Revenue, being aggrieved, is in appeal before us.

7. Before us Ld. DR filed his written submissions as summarized under:-

2.1 It is again submitted that this ground was not included in the grounds of appeal filed by the assessee before either CIT(A) or the Hon'ble ITAT, Kolkata, nor is the issue that there was lack of opportunity granted to the assessee.

2.2 The judgement of the Hon'ble Calcutta High Court in the case *Dr. Syamal Baran Mondal Vs. CIT* (2011) 244 CTR 631 states that "section 271 no where mandates that recording of satisfaction about concealment of assessee's income must be in specific terms and words, satisfaction of AO must reflect from the order either with expressed words recorded by the Assessing Officer himself or by his overt act and action."

2.2 The Bangalore bench of Income-tax Appellate Tribunal ('ITAT') in a recent decision in the case of *Jaysons Infrastructure India Private Limited vs ITO* [TS-5873-ITAT-2017(BANGALORE)-0] held that since the assessment order clearly mentioned the reason for initiation of penalty proceedings, not mentioning the reason in the penalty notice should not cause any prejudice to the taxpayer. Therefore, it was held that the requirements of section 271(1)(c), as discussed by the KHC, were complied with in this case.

2.2 The Jaipur Bench of Income-tax Appellate Tribunal ('ITAT') in a most recent decision in the case of *Airen Metals Pvt. Ltd., Jaipur vs Acit, Jaipur* on 29 September, 2017 in ITA No. 820/JP/2016 = **2017-TIOL-1555-ITAT-JAIPUR** held that the requirements of section 271(1)(c), as discussed by the Hon'ble Karnataka High Court in the case of *CIT & Anr. v. Manjunatha Cotton and Ginning Factory* = **2013-TIOL-536-HC-KAR-IT**, were complied with in this case.

2.3. In this case, the assessee submitted that the show cause notice issued u/s 274 r/w 271(1)(c), is not at all clear as to for what precise charge, the appellant was asked to show cause viz. whether the charge is that the assessee has furnished inaccurate particulars of income or it was for concealing particulars of such income in as much as a bare perusal of the said show cause notice clearly reveal that the inappropriate words/unwanted charge have not been struck off. The AO neither scored out nor ticked which particular part of alleged offence, he was relying upon. The assessee placed reliance on Hon'ble Karnataka High Court in the case of *CIT & Anr. v. Manjunatha Cotton and Ginning Factory* = **2013-TIOL-536-HC-KAR-IT**. The Hon'ble Tribunal's referred to para 59 of decision of the Hon'ble Karnataka High Court in case of *Manjunatha Cotton* while arriving at its decision, excerpt of which is reproduced as under:

"59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation 1 or in Explanation 1 (B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee."

"22. As the Hon'ble High Court held in the above case that the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(1)(c) do not exist as such he is not liable to pay penalty. The grounds for levy of penalty are thus linked to the adherence to the Principle of natural justice and it was held that such Principle of natural justice should not be offended. Now, let's examine how the same is applicable in the facts of the case. In the instant case, the assessee has been issued two show-cause notices. The first show-cause notice dated 28.12.2011 was issued along with the passing of the assessment order dated 28.12.2011 where the assessee was made aware of initiation of the penalty proceedings and thereafter, another showcause notice was issued on 18.06.2012. Though the first show-cause notice talks about concealing the particulars of income or furnishing inaccurate particulars of income and the latter show-cause notice talks about both concealing the particulars of income and furnishing inaccurate particulars of income, the assessee however chose to ignore both the show-cause notices and neither attended the penalty proceedings nor any written submissions/ explanations were submitted before the Assessing officer. Therefore, it is crystal clear the assessee was made aware of the penalty proceedings having initiated against it and was granted two opportunities by the Assessing officer to present its case offer its explanation. However, the assessee chooses to ignore those show-cause notices and now has come up before us and pleaded that the principle of natural justice has been violated by stating that the show-cause notice is vague. In our view, by not attending to the penalty proceedings before the AO without showing any reasonable cause, the assessee has effectively waived its right to contest at higher appellate forum that his rights to plead have been violated. Even before us, no

pleadings have been taken to show that there existed a reasonable cause for not attending to the penalty proceedings and offering its explanation before the AD. Further, no such pleading has been taken before the Id CIT(A) as well regarding violation of principle of natural justice. Having recorded the satisfaction in the assessment order, the penalty proceedings have been validly initiated and the issuance of notice u/s 274 is in furtherance of recording of such satisfaction and has thus to be read along with the assessment order and not independent of it. In our view, the assessee has rightly been made aware of the initiation of penalty proceedings and it for reasons best known to it choose to remain silent and failed to offer any explanation during the penalty proceedings. We therefore do not see any infirmity in the initiation of the penalty proceedings and there is clearly no violation of principle of natural justice as canvassed by the Id AR".

2.4. The facts of the instant case are identical to the assessee's case under appeal. In this case also, the assessee was given opportunity on three occasions viz; 07.11.2012, 02.04.2013 & 10.04.2013 but the assessee neither attended the penalty proceedings on the first two dates nor was any written submissions explanations submitted on 10.04.2013 when the AR appeared before the Assessing officer. The assessee was made aware of the penalty proceedings having initiated against it and was granted aforesaid opportunities by the Assessing officer to present its case / offer its explanation. But the assessee failed to do so. Hence, besides legal issue under consideration, even the facts of the case are identical to the case of Airen Metals Pvt. Ltd., Jaipur vs Acit = [2017-TIOL-1555-ITAT-JAIPUR](#). Therefore, the Order of the AO & CIT(A) should be confirmed.

2.5. The ITAT Mumbai in its order in Trishul Enterprises Vs. DCIT (ITA Nos.384 & 385/Mum/2014 for A.Yrs.2006-07 & 2007-08), Dt.10-02-2017, dismissed the contention of the assessee regarding failure of the AO to strike off the relevant part of the notice u/s.274 for initiating proceedings u/s.271 (1)(c). The ITAT relied upon the judgement of the Hon'ble Bombay High Court in CIT Vs. Smt. Kaushalya(1992) wherein it was held that "mere not striking off specific limb cannot by itself invalidate notice issued u/s.274 of the Act. The language of the section does not speak about the issuance of notice. All that is required that the assessee be given an opportunity of show cause.. "

2.6. The Hon'ble Bombay High Court (Nagpur Bench) in the case of M/s. Maharaj Garage & Company Vs. CIT in its judgement Dt.22-08-2017 = [2017-TIOL-1661-HC-MUM-IT](#), held that "15. The requirement of Section 274 of the Income Tax Act for granting reasonable opportunity of being heard in the matter cannot be stretched to the extent of framing a specific charge or asking the assessee an explanation in respect of the quantum of penalty proposed to be imposed, as has been urged ... "

2.7. The Hon'ble Mumbai E Bench in the case of Earthmoving Equipment Service Corporation vs DCIT 22(2), Mumbai (2017) 84 taxmann.com 51 = [2017-TIOL-630-ITAT-MUM](#) held "that after perusing the ratio of the judgement rendered in Manjunatha Cotton and Ginning Factory, we find that the assessee's appeal was allowed by the Hon'ble High Court after considering the multiple factors and not solely on the basis of defect in notice u/s 274. Therefore we are of the opinion that the penalty could not be deleted merely on the basis of defect pointed by the Ld AR in the notice and therefore the legal grounds raised are rejected."

3. Therefore, it is submitted that penalty proceedings for levy of penalty u/s.271(1)(c), were correctly initiated and the case may be heard on merits.

He vehemently relied on the order of AO.

On the other hand, Ld. AR for the assessee filed paper book which is running pages from 1 to 54 and filed written submissions. Ld. AR drew our attention on the provisions of Section 271(1)(c) of the Act which are reproduced hereunder:-

"(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person--

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income"

An analysis of the above section implies that penalty u/s 271(1)(c) of the Income Tax Act, 1961 stands attracted, in the case of an assessee, when:-

- *An assessee has concealed particulars of his income.*
- *An assessee has furnished inaccurate particulars of his income.*

Here, it will be befitting for us to discuss the meaning of

(i) 'concealment of particulars of income' and

(ii) 'furnishing of inaccurate particulars of income':

The dictionary meaning of the word 'conceal' is "to hide, withdraw, or remove from observation; cover or keep from sight; to keep secret; to avoid disclosing or divulging". Thus concealment of 'particulars of income' means non disclosure of particulars of income.

On the other hand, where particulars are disclosed but such disclosure is not correct, true or accurate, it would amount to 'furnishing of inaccurate particulars of income'.

The key phrase used in both the above charges is 'Particulars of income'. It is thus important to understand the meaning of this phrase: The concealment or furnishing" of inaccurate is with reference to 'particulars of income' only. The information/details about other details such as subjective areas including allowability of deduction or the interpretation of any legal provisions would not be covered by the above clause and would accordingly be outside the purview of section 271(1)(c). Only when there is concealment of income or the particulars of income furnished are inaccurate, the provisions of this section are attracted.

2. In connection to the above, attention of your Honours is invited to the judgment of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt Ltd 322 ITR 158 (SC) = [2010-TIOL-21-SC-IT](#) wherein it is held as under:

"The assessee claimed deduction u/s 36(1)(iii) for interest paid on loan taken for purchase of shares. The AO disallowed the interest u/s 14A and levied penalty u/s 271(1)(c) on the ground that the claim was unsustainable. The penalty was deleted by the appellate authorities. On appeal by the department to the Supreme Court, HELD dismissing the appeal:

(i) S. 271(1)(c) applies where the assessee "has concealed the particulars of his income or furnished inaccurate particulars of such income ". The present was not a case of concealment of the income. As regards the furnishing of inaccurate particulars, no information given in the Return was found to be incorrect or inaccurate. The words "inaccurate particulars" mean that the details supplied in the Return are not accurate, not exact or correct, not according to truth or erroneous. In the absence of a finding by the AO that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false, there would be no question of inviting penalty u/s 271(1)(c).

(ii) The argument of the revenue that "submitting an incorrect claim for expenditure would amount to giving inaccurate particulars of such income" is not correct. By no stretch of imagination can the making of an incorrect claim in law tantamount to furnishing inaccurate particulars. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars

regarding the income of the assessee. If the contention of the Revenue is accepted then in case of every Return where the claim made is not accepted by the AO for any reason, the assessee will invite penalty u/s 271(1)(c). That is clearly not the intendment of the Legislature.

(iii) The law laid down in Dilip Shroff 291 ITR 519 (SC) = [2007-TIOL-96-SC-IT](#) as to the meanings of the words conceal" and "inaccurate" continues to be good law because what was overruled in Dharmendra Textile Processors 306 ITR 277 (SC) = [2008-TIOL-192-SC-CX-LB](#) was only that part in Dilip Shroff where it was held that mens rea was an essential requirement for penalty u/s 271 (1)(e).

9.1. An analysis of the said decision clearly brings out that making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars of income.

9.2. In light of the same, if the facts of the case of the assessee is perused, it can be clearly seen that the assessee had purchased land as shall be evident from Schedule - E of the audited accounts enclosed at pages 3-21 of the paper book. Purchase deed of the land was duly furnished in the course of assessment proceedings. The auditor of the assessee had mistakenly claimed depreciation on said land to the tune of Rs.78,59,954/- in the A.Y. under consideration while finalizing the final accounts and preparing the return. The same was accepted by the auditor and vide its letter dated 05.08.2013 at para 7, the auditor wrote that it was an unintentional mistake which is offered for taxation (as shall be evident from the challan and evidences enclosed at pages 46-47 of the paper book) and the requested the Ld. A.O. to kindly consider the same as there was unintentional mistake. The Ld disallowed the claim of the impugned depreciation made in the Return. However, the Ld. A.O. initiated penalty proceedings u/s 271(1)(c) of the Act for such wrong claim of depreciation made in the return, although withdrawn as wrongly claimed in return of income.

3. However, the Ld. A.O. has not recorded any satisfaction in its Assessment Order as to why he felt that there were inaccurate particulars of income. The said bona fide mistake of auditor was duly rectified and necessary taxes and interest was paid.

4. Further it is submitted before your Honours that it is an undisputed fact that the assessee discovered the mistake suo moto and vide letter dated 05.08.2013 withdrew the claim having been made as an unintentional mistake. Therefore it was a claim made due to clerical mistake committed by the Auditor and also corrected by her and this cannot tantamount to furnishing of inaccurate particulars of income unless it is established that the assessee had acted with mala fide intention or has claimed deduction being aware of well settled legal position.

4.1. Thus from the above facts it is evident that the assessee had not furnished inaccurate particulars of income or had concealed or furnished inaccurate particulars of income in its Return of Income. In light of the aforesaid decision of the Hon'ble Supreme Court it is submitted that a mere claim of depreciation on land which is not sustainable in law, which was further corrected and offered to tax, does not amount to furnishing inaccurate particulars regarding the income of the assessee.

4.2. Reliance for the above can also be placed on the following judicial pronouncements:

- Commissioner of Income Tax V. Samurai techno Trading P. Ltd (2016) 389 ITR 357 (Ker) wherein it is held that "Under section 271 (1)(c) of the Income tax Act, 1961, if anyone of the officers mentioned therein is satisfied that any person has concealed the particulars of income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, the amount indicated. While appreciating the scope of clause (c), one has to take into account the provisions of Explanation 1 which is in two parts. Under clause (A) in respect of any facts material to the computation of the total income such person fails to offer an explanation or offers an explanation and the officer concerned has found it to be false. Clause (B) takes in three parts. The first part is that an explanation has been offered and the assessee is not able to substantiate it. The second part is that the assessee has failed to prove that such explanation offered by him is bona fide and the third part is that the assessee has failed to prove that all the

facts relating to the same and material to the computation of his total income have been disclosed by him. In order to attract section 271(1)(c) read with clause (B) of Explanation 1, there must be a positive finding that in the explanation offered, the three elements have been established. The words 'furnishing inaccurate particulars of income' refer to the particulars of his income which have been furnished by the assessee and the requirement of 'concealment of income' is that income has not been declared at all or is not even recorded in the books of account or in a particular case, the concealment of the particulars of income may be from the books of account as well as from the return furnished. Merely because the assessee has made certain claims, which were not accepted or was not acceptable to the Revenue, that itself would not attract the penalty under section 271 (1)(c).

The assessee had claimed certain deductions which were disallowed and addition had been made to its income. On the basis of this penalty proceedings under section 271(1)(c) of the Act were initiated for the assessment years 1993-94, 1994-95 and 1995-96. Penalty was imposed but it was cancelled by the Tribunal. On appeal:

Held, dismissing the appeal, that there was no finding that there were any concealment of any particulars of income or that the assessee had furnished inaccurate particulars of income to attract section 271(1)(c). Secondly the Assessing Officer had levied penalty ignoring the explanation submitted by the assessee. The cancellation of penalty was therefore justified."

- *PCIT VS. Torque Pharmaceuticals P. Ltd [2016] 389 ITR 46 (P&H) = [2016-TIOL-1210-HC-P&H-IT](#) wherein it is held that "Held, that an addition to income was made on account of disallowance of expenditure under section 40(a)(ia) of the Income-tax Act, 1961. The assessee had made a claim to deduction in the return of income. No finding had been recorded by the authorities below that the claim made by the assessee was mala fide. It had been categorically recorded by the Tribunal after examining the entire material on record that the Commissioner (Appeals) had rightly cancelled the penalty against the assessee. It was further recorded that the assessee made a bona. fide claim to deduction of the expenditure and even though it was not acceptable to the Department it would not lead to the conclusion that the assessee had concealed the particulars of income or .filed inaccurate particulars of income. The Tribunal was justified in cancelling the penalty under section 271 (1)(c) of the Act."*

- *PCIT Vs. S.S. Food Industries [2016] 382 ITR 388 (P&H) wherein it is held that "The assessee-firm engaged in the business of manufacturing of biscuits, cookies and other bakery products filed a nil return for the assessment year 2009-10 on September 30, 2009, claiming deduction under section 80-IC of the Income-tax Act, 1961. The Assessing Officer disallowed the deduction amounting. Penalty proceedings under section 271 (1)(c) were also initiated for filing inaccurate particulars of income and an order imposing penalty was passed. The Commissioner (Appeals) upheld the order imposing penalty. The Appellate Tribunal deleted the penalty. On appeal:*

Held, dismissing the appeal, that the judgment of the Supreme Court in the case of LIBERTY INDIA v. CIT [2009] 317 ITR 218 = [2009-TIOL-100-SC-IT](#) (which held against the assessee) was rendered on August 31, 2009 but was published for the first time only on September 17, 2009. It had been categorically recorded by the Tribunal that there was very little gap between the publication of the decision of the Supreme Court in LIBERTY INDIA'S case and the filing of the return by the assessee. At the time of filing the return the issue was debatable and penalty could not have been levied. Further the Tribunal had found that the assessee had disclosed all the particulars of the income and had not concealed anything. Once proper disclosure was made penalty was not attracted. The return was .filed on the basis of the certificate issued by the chartered accountant though under mistake, and the assessee could take the benefit on the basis

of bona fide belief The view adopted by the Appellate Tribunal was a plausible view based on appreciation of material on record and, therefore the order did not warrant any interference by the court. The Department was unable to show any perversity or illegality in the order. No substantial question of law arose for consideration."

Thus from the above judicial pronouncements, it stands established that making incorrect claim in law cannot tantamount to furnishing inaccurate particulars.

*5. Further, it is an accepted position, as noted in para 7 of the assessment order, that the assessee itself withdrew the claim realizing the same as mistake and offered the same for taxation. The instant case of the assessee is akin to the decision of the Hon'ble Supreme Court in the case of "Price Waterhouse Coopers (P) Ltd vs. CIT [2012/348 ITR 306 SC = **2012-TIOL-84-SC-IT**. In that case the facts behind the imposition of penalty u/s 271(1)(c) of the Act were that in the assessee's tax audit report it was indicated that provision towards payment of gratuity was not allowable but the assessee failed to add provision for gratuity to its total income. The Ld. A.O. imposed penalty u/s 271(1)(c) of the Act which was upheld by the Ld. CIT(A), the Hon'ble Tribunal upheld the imposition but reduced the quantum of penalty on the view that the assessee had made a mistake which could be described as a silly mistake. But since the assessee was a high calibre and competent organization, it was not expected to make such a mistake. The matter went to the Hon'ble High Court where the order of the Tribunal was confirmed. The matter ultimately went to the Hon'ble Supreme Court and the crux of the issue for consideration was whether it was a bona fide and inadvertent error on the part of the assessee, warranting no imposition of penalty u/s 271(1)(c) of the Act. According to the Hon'ble Apex Court, although undoubtedly the assessee is a reputed firm and has great expertise available with it, despite this it is possible that even the assessee could make a silly mistake. The relevant portion of the observation/finding (para 19 & 20) of the Hon'ble Supreme Court, to quote, is as under:*

"The contents of the Tax Audit Report suggest that there is no question of the Assessee concealing its income. There is also no question of the Assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the Assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the Assessee has little or nothing to do with the inadvertent error. That the Assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the Assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

Given the peculiar facts of this case, that the imposition of penalty on the Assessee is not justified. We are satisfied that the Assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars."

6. Thus as per the decision of the Hon'ble Supreme Court inadvertent error made by the assessee does not mean furnishing of inaccurate particulars of income or attempting to conceal its income and thus penalty provisions u/s 271(1)(c) cannot be Imposed on the assessee.

7. The above contention of the assessee also finds its strength from the following judicial pronouncements:

- The Jurisdictional Kolkata ITAT in the case of "DCIT, CC-VIII vs. Ram Chandra Agarwal ITA No.1700/Ko/2012 held that "We find that the assessee was under bona fide belief that on off market share transaction of trading in listed company share, no capital gains would arise. We hold that this bona fide belief cannot be doubted in the facts of the case. We also hold that the assessee had duly come forward to rectify the mistake in not mentioning the long term capital on sale of listed company's shares on off market in his original return of income, and on noticing the same the assessee immediately filed revised computation of income during assessment proceedings and as entered in the order sheets by the Id. AO.*

Thus, the assessee offered the same voluntarily before detection by the department. We also find that the version of the Id.AO in his penalty order that assessee was confronted with the specific issue on taxability of long term capital gain on sale of shares of M/s. Vishal Retail Ltd. is factually incorrect. It is relevant to reproduce herein below the Explanation 1 to section 271(1) of the Act.

Explanation 1 to section 271(1)(c):

"Where in respect of any facts material to the computation of the total income of any person under this Act-

(A) such person fails to offer an explanation or offers an explanation which is found by the assessing Officer or the Commissioner (Appeals) or the Commissioner to be false, or

B) Such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this subsection, be deemed to represent the income in respect of which particulars have been concealed. 11 In the instant case, the assessee had furnished the explanation to the assessee by filing a revised computation of income offering long term capital gains voluntarily.

We also find that the assessee had also given explanation for not offering the same in the original return of income due to his bona fide belief as stated supra. His bona fide explanation has not been found to be false by the Id. AO. From the above, it could be safely concluded that as per Explanation 1 to section 271(1)(c) of the Act, no penalty could be imposed on the assessee in the facts of the case.

In view of the aforesaid facts and respectfully following the various judicial precedents mentioned herein above, we have no hesitation in upholding the impugned order of the Id. CIT(A) in cancelling the penalty levied u/s. 271 (1) (c) of the Act. The ground raised by the revenue is dismissed."

- The Jurisdictional ITAT Kolkata also in the case of B.D. Khaitan & Company Limited Vs. Assistant Commissioner of Income Tax, Circle-5 in I.T.A. No. 310/Ko1/2012 has held that" We have heard the rival submissions and perused the material available 0.11 record. What we find is that the Assessing Officer had himself accepted that non-addition of loss on sale of fixed assets of Rs.1,42,7291-, suo motu by the assessee, was only a mistake. There is no dispute that it was the first year of E- filing of return. Therefore it was very possible for such a mistake to happen. Once it is accepted as a simple mistake of the assessee and not made with any intention of concealing any income, we cannot say that there is any element of concealment or furnishing of inaccurate particulars of income. None of the lower authorities has pointed out as to what inaccurate particulars were filed by the assessee with regard to the loss on sale of fixed assets. Obviously loss on sale of fixed assets was mentioned by the assessee itself in its books of accounts. Hon'ble Apex Court in the case of Price Water House Coopers Pvt. Ltd. v. CIT [MANUISCIO79912012MANUISCIO79912012 348 1TR 306] = **2012-TIOL-84-SC-IT** held that even a reputed firm like Prime Waterhouse Coopers Pvt. Ltd. having great expertise could make a silly mistake in computation and if such mistake is bona fide and inadvertent cannot lead to a penalty under section 271 (1)(c). This is all the more a good reason for us to reach an opinion that this was not a fit case where we can say that assessee had concealed any inaccurate particulars in respect of its income. In our opinion, levy*

of penalty under section 271(1)(c) was not warranted. Such penalty stands quashed. In the result, appeal of the assessee is allowed."

• *Vinita Pahwa vs. ACIT, Circle 3(1) (25.04.2016 ITAT Delhi) MANU/ID/0400/2016* wherein it is held that "Following the law laid down by the Hon'ble Apex Court in the judgment cited as *Price Waterhouse Coopers Pvt. Ltd. (supra)* and in view of the facts discussed in the preceding paras, we are of the considered view that the impugned order passed by the CIT(A) confirming the penalty order is not sustainable in the eyes of law as the assessee has claimed provision for bad and doubtful debts due to inadvertent and bona fide mistake and voluntarily revised the income by offering the said amount of Rs. 4,59,7141- for taxation.

Consequently, the impugned order passed by CIT(A) is hereby set aside. In view of what has been discussed above, the present appeal filed by the assessee is hereby allowed."

14.1. Applying the ratio of the above judicial decisions to the facts of the case of the assessee, it is submitted that the assessee had claimed depreciation on land amounting to 7,89,59,536/- due to inadvertent and bona fide mistake and voluntarily offered the same for taxation during the course of assessment. The said fact was clearly appreciated by the Ld. CIT and thus deleted the impugned penalty imposed by the Ld. AO. u/s 271 (1)(c) of the Income Tax Act, 1961.

15. However, the notice u/s 274 of the Act should specifically state the grounds mentioned in section 271(1)(c) i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law. In this regard reliance can be placed on the decision of the Hon'ble Karnataka High Court in the case of *CIT vs. M/s SSA's Emerald Meadows* in ITA No. 380 of 2015 = [2015-TIOL-3076-HC-KAR-IT](#) wherein it is held that "notice issued by the A. O under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 to be bad in law as it did not specify which limb of section of the Act, the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal while allowing the appeal of the assessee has relied on the decision of the Division bench of this court in the case of *CIT Vs. Manjunatha Cotton and Ginning Factory* [2013~ 359 ITR 565 = [2013-TIOL-536-HC-KAR-IT](#).

The said decision of the Karnataka High Court has been affirmed by the Honb'le Supreme Court in SLA CC. No. 11485/2016. The said order is enclosed at pages 50-54 of the paper book

15.1. Applying the aforesaid ratio to the facts of the case of the assessee company, it can be seen that notice dated 28.08.2013 under section 274 read with sec 271(1)(c) of the Act issued in the case of the assessee, does not specifically mention whether the same was issued for concealment of income or for inaccurate particulars of income (enclosed at pages 48-49 of the paper book). The said notice is a printed notice wherein all the grounds mentioned in section 271(1)(c) are mentioned. In other words, the Ld. AO has not pointed out or marked in the notice whether the assessee had concealed his income or had furnished inaccurate particulars of income. Thus as per the aforesaid decision of the Karnataka High Court which was affirmed by the Hon'ble Supreme Court, the notice does not meet the requirements of law and hence no penalty shall be imposed upon the assessee.

16. Thus on the basis of the facts as narrated above, it is humbly submitted before your Honours that the Ld. CIT has correctly deleted the penalty so imposed by the Ld. AO. amounting to Rs.23,68,786, hence the appeal of the Department be dismissed.

8. We have heard the rival contentions of both the parties and perused the material available on record and the judicial pronouncements cited by both the parties. It is beyond doubt that the assessee has claimed depreciation on the land for which it was not entitled under the provisions of the Act. The mistake

committed by the assessee was admitted during assessment proceedings and therefore the income of the assessee was enhanced by the amount of depreciation claimed on the land. It is also a fact that the assessee is also a private limited company and assisted by the tax consultants. Therefore such silly mistake cannot be expected by such organized company. However the Hon'ble Supreme Court in such a situation has held that the inadvertent mistakes committed by the assessee do not warrant the imposition of liability under section 271(1)(c) of the Act. The relevant case law is *Price Waterhouse Coopers (P) (Itd) Vs. CIT reported in 348 ITR 306 = 2012-TIOL-84-SC-IT* where the Hon'ble Apex Court has held as under:-

19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.

Besides the above we also find that notice issued by the AO u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. The plea of the Id. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled.

9. In the result, Revenue's appeal stands dismissed.

(Order pronounced in the open court 02.02.2018)

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